THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

DEPARTMENT OF
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September 19, 2005

Re: Petition of the City of Cambridge, D.T.E. 04-65

Dear Mr. Shortsleeve, Mr. Rosenzweig and Mr. Habib:

I. Introduction

On October 4, 2004, pursuant to G.L. c. 164, § 34A ("Section 34A"), the City of Cambridge ("City") filed a petition with the Department of Telecommunications and Energy ("Department") requesting that the Department resolve its dispute with Cambridge Electric Light Company ("CELCo" or "Company") as to the method for calculating the purchase price of the Company's streetlights (Petition at ¶¶ 20, 22, 23; Exh. NSTAR-1).[1] On October 19, 2004, the Company filed a response to the City's petition. The Department docketed this matter as D.T.E. 04-65.

On January 14, 2005, the Department conducted a hearing. The City sponsored the testimony of Paul L. Chernick, president of Resource Insight, Inc. The Company sponsored the testimony of Christine L. Vaughn, manager of regulatory requirements for the Company. The evidentiary record consists of 107 exhibits. The Company filed responses to five record requests. The City and CELCo filed initial and reply briefs.

II. Summary of the Dispute

The City requested that the Department resolve its dispute with the Company regarding the method for calculating the purchase price as of December 31, 2003, for street lighting equipment transferred to the City (Exhs. COM at 3-4; NSTAR-1). The Company calculates the purchase price to be $1,726,000 whereas the City calculates the price to be $876,000 (Exh. NSTAR-1; Exhs. CAM-PLC at 5, 10-13; CAM-2, 3, 4, 5). The City stated that net negative salvage value accounts for the vast majority of the $850,000 difference between the purchase price put forth by the Company and the purchase price put forth by the City (Tr. at 41, citing Exh. CAM-5).[2]

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1 A municipality may acquire all or any part of the streetlighting equipment of the electric company in the municipality. G.L. c. 164, § 34A. When purchasing streetlighting equipment, municipalities are required "to compensate the electric company for its unamortized investment, net of any salvage value obtained by the electric company under the circumstances, in the lighting equipment owned by the electric company in the municipality as of the date the electric company receives notice of such exercise." Id. The Department is required to resolve any dispute concerning any matter arising in connection with the exercise by any municipality of its option to "acquire, or compensate the electric company for, the lighting equipment of the electric company in the municipality . . . ." Id. In Cambridge Electric Light Company, D.T.E. 03-58 (2003), the Department approved the Company's alternative streetlighting tariff for the City if the City chose to purchase streetlighting equipment pursuant to G.L. c 164, § 34A.

2 The Company explained that net salvage value is the combination of the cost of removal and the salvage proceeds obtained from the removed equipment (Exh. NSTAR-CLV at 20). The Company stated that "net negative salvage value" represents the amount by

(continued...)

In calculating the purchase price, the Company subtracted the depreciation reserve for streetlighting equipment recorded on its books from the gross plant value (or original installed cost) recorded on its books to determine the net book value of all its streetlighting equipment (Exh. NSTAR-CLV at 9-10). The Company stated that the gross plant value recorded on its books for streetlighting equipment is the net total of actual gross plant additions, retirements and transfers as reported in Federal Energy Regulatory Commission ("FERC") Account 373, Streetlighting and Signal Systems (Exhs. NSTAR-CLV at 9-10; NSTAR-1; NSTAR-2). The Company explained that depreciation reserve is a function of actual construction costs incurred, Department-approved depreciation rates, actual asset retirements and cost of removal, and salvage value relating to any retired plant as reported in a sub-account of FERC Account 108, Accumulated Provision for Depreciation of Electric Utility Plant (Exhs. NSTAR-CLV at 9-10; CITY 1-9).

The Company calculated net salvage value by subtracting the cost of removal from the salvage proceeds obtained from the removed equipment (Exh. NSTAR-CLV at 20). The Company noted that the cost of removal is typically greater than the salvage received for the scrap material (id. at 21). The Company presented evidence that, during the last decade, the cost of removal for streetlight equipment in the City has been approximately four times greater than the value of gross salvage and, therefore, the streetlighting equipment in the City has net negative salvage value (id.; RR-DTE-2, Att. A).

The Company stated that because privately-owned streetlighting equipment in the City is not being purchased, it was necessary for the Company to determine how much of the net book value of all its streetlighting equipment should be allocated to the municipal streetlights being purchased (Exh. NSTAR-CLV at 10).[3] The Company accomplished this allocation by first assigning a portion of the accumulated depreciation to each vintage year of streetlighting equipment in order to account for the relative age of the equipment being purchased (id.).[4] Using these data, the Company then allocated the book value of individual vintage years by

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2 (...continued)
which the cost of removal of gross plant retirements exceeds any salvage realized (id.).

3 The Company stated that its property records provide the installation date and the customer of record for each piece of streetlighting equipment (Exhs. NSTAR-CLV at 10; NSTAR-CLV-AFF at ¶ 11; DTE-1-1; DTE-1-1 (b); CITY-1-2 (a)).

4 This process was based on Iowa curves (Exh. NSTAR-CLV at 10). The Company explained that Iowa curves are a statistical method to estimate how long a particular class of assets will remain in service and as such are often used to allocate accumulated depreciation to assets by age (see Exh. NSTAR-CLV at 13).

customer class (i.e. municipal or privately- owned) based on the number of streetlights (Exhs. NSTAR-CLV at 10; NSTAR-CLV-AFF at ¶ 17; DTE-1-1). Using this method, the Company arrived at a purchase price for the municipal streetlights of $1,726,000 as of December 31,2003 (Exhs. CAM at 3-4: NSTAR-1).

The City disputed the Company's method for determining accumulated depreciation. Specifically, the City disputed the Company's inclusion of net negative salvage value in the determination of the reserve for accumulated depreciation (Exhs. CAM at 4; CAM-PLC (Supp.) at 2-3).[5] Instead, the City proposed to calculate accumulated depreciation by multiplying the streetlighting equipment's gross plant balances by Department-approved depreciation rates and reducing the sum by the cost of the prior year's gross retirements (Exh. CAM-PLC at 3). Using this method, the City arrived at a purchase price for the municipal streetlights of $876,000 as of December 31, 2003 (Exhs. CAM-PLC at 5, 10-13; CAM-2, at 3- 5).

[5] The City and CELCo agree that: (1) the gross plant value of the streetlights located in the City as of December 31, 2003 is recorded on the Company's books in Account 373, Streetlighting and Signal Systems; (2) accumulated depreciation must be subtracted from the gross plant value of the streetlights to determine unamortized value; (3) accumulated depreciation must be computed based upon Department-approved rates; (4) the cost of actual asset retirements should be factored into the calculation of accumulated depreciation to the extent to which such retirements are identifiable; and (5) the application of the method Commonwealth Electric Company used for calculating accumulated depreciation in Edgartown, Harwich, Sandwich, D.T.E. 01-25 (2001), is inappropriate in this proceeding because CELCo has a complete history of annual additions and retirements specific to streetlights in the City (Exhs. CITY 1-9; NSTAR-CLV at 19; CAM-PLC at 6, 12).

III. Positions of the City and the Company

A. City

The City argues that the Company should not have included net negative salvage in its calculation of the streetlighting equipment purchase price (City Brief at 2-4). Cambridge asserts that this practice is: (1) inconsistent with G.L. c. 164, § 34A; and (2) includes salvage values and costs of removal that were not substantiated (id.). The City also claims that its due process rights to seek discovery regarding assumptions and calculations were denied because the Company raised the issue of removal costs and salvage value after the discovery deadline had passed (id. at 18).[6]

First, the City argues that, pursuant to Section 34A, net negative salvage value is separate and distinct from the concept of unamortized investment (City Brief at 3). The City posits that the language of Section 34A requires removal costs net of any salvage value be paid by a municipality only in circumstances in which a community elects to purchase some of the streetlights and then further elects to have the electric company remove the streetlights that the municipality did not acquire (id. at 3-4). The City contends that because it has not asked the Company to remove any streetlights, salvage value and removal costs should not apply in this circumstance (id. at 4).[7] Further, the City contends that CELCo's inclusion of net negative salvage value is inconsistent with methods approved by the Department in other streetlighting dispute proceedings (id. at 7-8, citing Petition of the Towns of Lexington and Acton, D.T.E. 98-89 (1998); D.T.E. 01-25; Petition of the City of Waltham, D.T.E. 02-11 (2002)).

Second, even if the Department does determine that net negative salvage value may be included in the calculation of streetlighting equipment purchase prices, the City argues that the Department should reject the evidence presented by CELCo regarding actual net negative

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6 The City contends that, during the negotiations of the streetlight purchase that occurred prior to the City's request for this dispute resolution proceeding, CELCo did not provide any data to the City on net negative salvage value to account for the differences between the City's and the Company's determination of unamortized investment (City Brief at 12-17; see Exhs. CAM-PLC (Supp.) at 2-3; CITY 1-15; CLV-2; NSTAR-CITY 1-15; Tr. at 56).

7 The City recognizes that net negative salvage value must be accounted for on the Company's books and must be recovered in some form, but argues that it should not be recovered in the calculation of unamortized investment of the City's streetlights (City Brief at 7-10; see Tr. at 38).

salvage value because this evidence was not substantiated (City Brief at 12-14, 17-18). The City claims that the Company did not provide adequate accounting records, including any evidence to confirm the Company's cost of net negative salvage value (City Brief at 12-17; see Exhs. CAM-PLC (Supp.) at 2-3, 6-8; CAM-PLC at 6).

B. Company

The Company disputes the City's argument that the inclusion of net negative salvage value is inconsistent with Section 34A. The Company counters that the City's interpretation is inconsistent with the plain language of the statute and with utility accounting practice (CELCo Reply Brief at 9-10, 12 citing G.L. c. 164, § 34A(b)). The Company argues that, for the purposes of determining the appropriate price of streetlighting equipment in this proceeding, the terms "unamortized investment" and "net book value" are synonymous (CELCo Brief at 14, citing NSTAR-CLV at 11). CELCo argues that "unamortized investment" must include the Company's costs of removal, less salvage value (CELCo Brief at 13-15; CELCo Reply Brief at 7-10). CELCo concludes that the General Court could not have intended a result in which a sale of streetlights would result in only partial compensation for distribution companies and discounts for purchasing municipalities by not fully recognizing the net negative salvage value component of accumulated depreciation (CELCo Reply Brief at 10-11). The Company contends that if it excluded net salvage value in determining the purchase price, as the City proposes, CELCo would not recover its full net book value this equipment and, therefore, other customers would bear any shortfall through the normal ratemaking process (CELCo Brief at 11, 18; Exh. NSTAR-CLV at 28; Tr. at 61-63).

With respect to the City's request that the Department reject CELCo's evidence on net negative salvage value, the Company contends that it included net salvage value in the calculation of the streetlight purchase price it provided to the City prior to this proceeding because CELCo derived this calculation based solely from its accounting records (CELCo Reply Brief at 16-17; Exh. NSTAR-1; Tr. at 72, 80, 140-141). CELCo explained that it did not specifically identify net salvage value in this earlier calculation because the value was included in its accounting records with all other items (CELCo Reply Brief at 17-19, Exhs. NSTAR-1; CITY 1-9; NSTAR-CLV at 19; CITY 1-9; Tr. at 72). In addition, the Company argues that the City addressed this issue in the City's prefiled supplemental testimony (CELCo Reply Brief at 17, citing Exh. CAM-PLC (Supp.) at 8-14). CELCo adds that the City had an opportunity to reopen discovery or cross-examine the Company's witness to ask the questions it raises in its initial brief (CELCo Brief at 17).

Finally, with respect to the City's claim that the Company did not provide adequate accounting records, CELCo argues that it has developed a streetlight equipment valuation based solely on its original cost data, including additions, retirements, transfers and adjustments, as well as accumulated depreciation data as recorded on its audited books of account for streetlights subject to sale to the City (CELCo Brief at 11). The Company contends that its accounting books provide the necessary values to determine the purchase price because the City is the sole municipality that it serves (CELCo Reply Brief at 13-15; see Exh. NSTAR-CLV at 7; Exhs. D.T.E. 1-5; D.T.E. 1-5(a)(att.); RR-DTE-2; Tr. at 72).

IV. Analysis and Findings

The Department must resolve whether the Company can include net negative salvage value in the determination of the reserve for accumulated depreciation. When a municipality exercises its option to purchase an electric company's streetlighting equipment, it must "compensate the electric company for its unamortized investment, net of any salvage value obtained by the electric company . . . ." G.L. c. 164, § 34A.

The City and CELCo agree that one of the costs recoverable through the ordinary § 94 ratemaking process is net negative salvage, although they dispute whether it should be recovered in the streetlight purchase price calculation (Exhs. CAM-PLC (Supp.) at 16; NSTAR-CLV at 9-10). The purchase price for the streetlights must compensate an electric company for that portion of its investment in streetlights which it would have recovered through the normal ratemaking process had the streetlights not been sold. See D.T.E. 01-25, at 7, n.12. In other words, the calculation of unamortized investment for purposes of purchasing streetlights should also be consistent with the utility's traditional accounting practices for tracking original investment and accumulated depreciation for ratemaking purposes (see Exhs. CAM-PLC at 3; CAM-PLC (Supp.)). There is no reason evident on this record to depart from customary ratemaking techniques here and treat § 34A accounting differently. Nor is there any reason to suppose that in enacting St. 1997, c. 164, § 196, inserting G.L. c. 164, § 34A, that the Legislature intended anything other than that the new § 34A should be read pari materia with G.L. c. 164, § 94 and its long body of accounting precedent.

We do not accept the City's arguments that net negative salvage value: (1) should be treated separately from unamortized investment; and (2) must be paid only in circumstances in which a community elects to purchase some of the lights and then further elects to have the Company remove the lights that the municipality did not acquire. This interpretation would preclude CELCo from including an actual cost incurred in determining its unamortized investment in the City's streetlights. This would be inconsistent with Department policy that cost responsibility follows cost incurrence. That is, the revenue requirement for each rate class should reflect the costs a company incurs in serving that class. See Boston Gas Company, D.P.U. 96-50 (Phase I) at 133-134 (1996); Boston Edison Company, D.P.U. 1720, at 114 (1984). Accordingly, we conclude that CELCo's inclusion of net negative salvage value in its calculation of unamortized investment is consistent with G.L. c. 164, § 34A and Department policy noted above.

The City argues that, contrary to DTE precedent, the Company did not provide adequate accounting records to confirm the Company's cost of net negative salvage value, which is a component of accumulated depreciation. We disagree. In contrast to the prior streetlighting equipment purchase price disputes addressed by the Department in D.T.E. 98-89, D.T.E. 01-25, and D.T.E. 02-11, CELCo does not have to allocate system-wide accumulated depreciation to the City's streetlights because the City is the only municipality in the Company's service territory.[8] Because the costs reported on the Company's books are specific to the City as the sole municipality CELCo serves, the reserve for accumulated depreciation for streetlights recorded on the Company's books applies only to the streetlights located in the City.

The record demonstrates that the Company determined the unamortized value of the City's streetlights directly from its accounting records; it subtracted accumulated depreciation as recorded on its books (in a sub-account of FERC Account 108) from the gross plant value of the streetlights, as recorded in FERC Account 373 (see Exhs. NSTAR-CLV at 8, 19; CITY 1-9). The accumulated depreciation on the Company's books included net negative salvage values, consistent with FERC instructions for Account 108. CELCo did not need to reconstruct a reserve for depreciation because the Company presented evidence of the actual

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[8] In previous streetlighting proceedings, companies were unable to specifically identify the accumulated depreciation reserve associated with the equipment to be sold. D.T.E. 98-89, D.T.E. 01-25, and D.T.E. 02-11. Moreover, the Department did not accept the methods the companies' proposed to allocate system-wide accumulated depreciation to the streetlights being sold. Accordingly, it was necessary in those cases to reconstruct a reserve for depreciation using Department approved depreciation rates. The cost of retirements that occurred prior to the acquisition of the streetlighting plant, were included in the calculation of the reserve for depreciation to the extent such retirements could be identified. The issue of net negative salvage value was not raised in these proceedings. The complete congruity between the Company's service territory and the City's municipal boundaries has permitted addressing a key accounting issue very directly and in a way that may inform resolution of future disputes, even where a company has not maintained street lighting plant accounts on a municipality-by-municipality basis. In the future, distribution companies able to identify specific data on net negative salvage associated with the streetlighting equipment being sold may propose to include these costs in their determination of unamortized value.

accumulated depreciation associated with the City's streetlights.[9] The gross plant in service and accumulated depreciation balances on the Company's accounting records are the same balances that would be used to set rates for the Company. These balances represent the result of actual events, not projections or estimates. Moreover, these accounting records have been and remain subject to review by the Department, the FERC, and by the Company's internal and external auditors.[10] Based upon our review of the record, we find that the Company determined the unamortized value of the streetlights based directly from its accounting records and provided sufficient evidence to support the accuracy of these records. Accordingly, we will rely upon these values to determine the purchase price of the streetlights in this proceeding.

Finally, the City argues that it was denied its due process rights to seek discovery regarding assumptions and calculations of net negative salvage value because this evidence was submitted late and was unreviewed. The Company offered evidence regarding net negative salvage value in a discovery response 28 days before the hearing (Exh. CITY 1-15). The City filed testimony 24 days later that addressed, among other things, the issue of cost of removal and net salvage value (Exh. CAM-PLC (Supp.) at 2-5). Finally, the City cross-examined the Company and CELCo responded to five record requests on this issue (RR-CITY-1, RR-CITY-2, RR-CITY-3; RR-DTE-1, RR-DTE-2; Tr. at 79, 86-107, 138-148, 165). We conclude that the City had an adequate opportunity to discover the issue of net negative salvage value and was not denied any due process rights.

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9 The City, on the other hand, calculated a reconstructed reserve for depreciation based only upon Department approved depreciation rates and the identifiable cost of gross plant retirements (Exh. CAM-5).

10 In addition to being made in a form required by regulators, the accounting records were made in the ordinary course of business and without regard to future § 34A litigation. The records are, accordingly, entitled to admissibility and weight. See e.g., G.L. c. 233, § 78.

Accordingly, we accept the method the company presented in this proceeding and direct the Company to determine the purchase price of the streetlights that serve the City by subtracting accumulated depreciation from gross plant in service, as those amounts appear on the Company's audited books of account in the record of this proceeding.

By Order of the Department,

__________/s/_____________________
Paul G. Afonso, Chairman

__________/s/______________________
James Connelly, Commissioner

__________/s/______________________
W. Robert Keating, Commissioner

__________/s/______________________
Judith F. Judson, Commissioner